

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1294 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HANIF @ AMUMIYA

Versus

STATE OF GUJARAT

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Appearance:

MR FB BRAHMBHATT for Petitioner  
Mr N D Gohil, AGP for Respondent No. 1  
SERVED for Respondent No. 2, 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/01/98

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of externment dated 19.6.1997 passed by the Sub-Divisional Magistrate, Junagadh. The petitioner was served show cause notice on 9.9.1996 under section 59 of the Bombay Police Act, whereby he was asked to show cause

as to why he should not be externed from the area of Junagadh district, Rajkot city, Rajkot (Rural), Porbandar district and Amreli district for a period of two years. The petitioner preferred appeal against the order before the Dy. Secretary, Home Department, Gandhinagar, which was rejected by order dated 1.9.1997. It is contended by the learned Advocate that there is an inordinate delay of 9 months in between the show cause notice and the order of externment. Thus, the satisfaction of the authority in taking preventive action against the petitioner is illegal. He places reliance on an unreported decision of this Court in Special Criminal Application No.63/96 decided on 10.12.1997.

2. Mr M L Makwana, Sub-Divisional Magistrate, Junagadh has filed affidavit. In para 3 of the affidavit, he has explained the delay. The delay has been attributed to the petitioner, inasmuch as a number of adjournments were sought on the ground of his illness, non-availability of the lawyer on account of his being sick or being busy in other Courts.

3. This Court, in the aforesaid unreported judgment, has held that it is the sole responsibility of the concerned authority to regulate the proceedings. The order of externment being a preventive measure, adjournment cannot be granted as a matter of course. The Sub-Divisional Magistrate has failed to regulate the proceedings so as to achieve the object of taking preventive measures like externment. By delaying the proceedings, the very purpose of such proceedings are defeated. The long delay in the present case alone is sufficient to vitiate the impugned order of externment.

4. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of externment dated 19.6.1997 and the order of confirmation passed in Appeal are quashed and set aside. Rule made absolute accordingly.

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msp.